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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/763,032 | 01/22/2004 | Donald F. Wilson JR. | 59474.21780 | 6979 |

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| EXAMINER |
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RYCKMAN, MELISSA K

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| ART UNIT | PAPER NUMBER |
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3734

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-----------------|---------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/763,032 | WILSON ET AL. | |
| | Examiner | Art Unit | |
| | Melissa Ryckman | 3734 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/22/2004.
 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-20 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>4/12/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Oh et al. (U.S. Patent No. 5,062,846).

Oh discloses a surgical clip with an interlocking latch mechanism, including a first leg (12) and a second leg (14), each of said legs having an inner vessel-clamping surface (20 and 24) and an outer surface (28 and 30), said inner surfaces being positioned in opposition to each other; a flexible hinge section (16) integrally disposed between and joining the proximal ends of said first and second legs; and a female locking member (hook member 22) positioned on the distal end of said first leg and comprising a resilient inwardly turned hook defining a recess in the mouth of said hook, and a male locking member (beveled surface 48) positioned on the distal end of said second leg comprising at least one detent (beveled surface 48) extending outwardly therefrom, said female and male locking members being formed whereby when said first and second leg members are moved from an open position to a closed position about said hinge section, said resilient hook of said female locking member is urged open to receive the detent of said male locking member in the recess thereof so as to removably lock

said first and second leg members of said surgical clip in said closed position
(See Figure 7).

3. Referring to claim 2 the surgical clip of claim 1, further comprising a gusset (43) within the mouth of said hook.
4. Referring to claim 3 the surgical clip according to claim 2, wherein said gusset divides said recess (surface 45) in the mouth of said hook so as to form a bifurcated recess (surface between the edge of 43 and the surface of 45).
5. Referring to claim 4 the surgical clip according to claim 1, wherein the at least one detent extending outwardly from said male locking member comprises two spaced-apart detents (beveled surface 48) each having an inwardly turned lip extending generally toward said flexible hinge section for lockingly engaging said recess in the mouth of said hook.
6. Referring to claim 5 the surgical clip of claim 1, wherein said inner surface of said first leg (20) has a concave radius of curvature between said hinge section and its distal end, said outer surface of said first leg (30) has a convex radius of curvature between said hinge section and its distal end, said inner surface of said second leg (24) has a convex radius of curvature between said hinge section and its distal end, and said outer surface of said second leg (38) has a concave radius of curvature between said hinge section and its distal end.
7. Referring to claim 6 the surgical clip of claim 1, further comprising a pair of bosses (68 and 70) joined to opposite sides of said first leg (12) between said hinge section and the distal end of said first leg, and a pair of bosses (72 and 74)

Art Unit: 3734

joined to opposite sides of said second leg (14) at the distal end of said second leg.

8. Referring to claim 7 the surgical clip of 6, wherein a portion of said pair of bosses (72 and 74) joined to said first leg extend beyond said outer surface of said first leg to form a bridge section (col. 6 ll. 24-26).
9. Referring to claim 8 the surgical clip of claim 6, wherein said pair of bosses (72 and 74) on said second leg each have a sharp tissue-penetrating tooth (81 and 83) extending therefrom toward said first leg.
10. Referring to claims 9 the surgical clip of claim 1, wherein at least one of said inner surfaces of said clip comprises a plurality of protrusions (1304 and 1302) extending from said inner surface for providing improved vessel retention during and following closure of said clip.
11. Referring to claim 10 the surgical clip of claim 9, wherein both of said inner surfaces of said clip comprise said plurality of protrusions (1304 and 1302).
12. Referring to claim 11 the surgical clip of claim 1, wherein said hinge section has a continuous concave inner surface (50) and a continuous convex outer surface (52).
13. Referring to claim 12 a surgical clip with an interlocking latch mechanism having a first leg (12) and a second leg (14), each of said legs having an inner vessel-clamping surface (20 and 24) and an outer surface (28 and 30), said inner surfaces being positioned in opposition to each other; a flexible hinge section (16) integrally disposed between and joining the proximal ends of said first and

second legs; and a female locking member (hook member 22) positioned on the distal end of said first leg and comprising a resilient inwardly turned hook defining a bifurcated recess (surface between the edge of 43 and the surface of 45) in the mouth of said hook, and a male locking member (beveled surface 48) positioned on the distal end of said second leg comprising two outwardly extending spaced-apart detents each having an inwardly turned lip extending generally toward said flexible hinge section (16) to facilitate said detents lockingly engaging said recess, whereby when said first and second leg members are moved from an open position to a closed position about said hinge section said resilient hook of said female locking member is urged open to receive the detent of said male locking member in the recess thereof so as to removably lock said first and second leg members of said surgical clip in said closed position (see Figure 7).

14. Referring to claim 13 the surgical clip of claim 12, further comprising a gusset (43) within the mouth of said hook.
15. Referring to claim 14 the surgical clip of claim 12, wherein said inner surface of said first leg (20) has a concave radius of curvature between said hinge section and its distal end, said outer surface of said first leg (30) has a convex radius of curvature between said hinge section and its distal end, said inner surface of said second leg (24) has a convex radius of curvature between said hinge section and its distal end, and said outer surface of said second leg (38) has a concave radius of curvature between said hinge section and its distal end.

Art Unit: 3734

16. Referring to claim 15 the surgical clip of claim 12, further comprising a pair of bosses (68 and 70) joined to opposite sides of said first leg (12) between said hinge section and the distal end of said first leg, and a pair of bosses (72 and 74) joined to opposite sides of said second leg (14) at the distal end of said second leg.
17. Referring to claim 16 the surgical clip of 15, wherein a portion of said pair of bosses joined to said first leg extend beyond said outer surface of said first leg to form a bridge section (col. 6 ll. 24-26).
18. Referring to claim 17 the surgical clip of claim 15, wherein said pair of bosses on said second leg (72 and 74) each have a sharp tissue-penetrating tooth (81 and 83) extending therefrom toward said first leg.
19. Referring to claim 18 the surgical clip of claim 12, wherein at least one of said inner surfaces of said clip comprises a plurality of protrusions (1304 and 1302) extending from said inner surface for providing improved vessel retention during closure of said clip.
20. Referring to claim 19 the surgical clip of claim 18, wherein both of said inner surfaces of said clip comprise said plurality of protrusions (1304 and 1302).
21. Referring to claim 20 the surgical clip of claim 12, wherein said hinge section has a continuous concave inner surface (50) and a continuous convex outer surface (52).

Double Patenting

22. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

23. Claims 1,5,6, and 7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of Wilson, Jr. (U.S. Patent No. 6,863,675) in view of Sixto, Jr. et al. (U.S. Patent No. 6,716,226).

Claim 1 is rejected over Wilson, Jr. in view of Sixto, Jr. Claim 1 is summarized by a the clip having two legs positioned opposite to each other (col. 7 ll. 64 and col. 8 ll. 2) with a flexible hinge between the two legs (col. 7 ll. 65); and a female locking member at the distal end of one leg comprising a resilient inwardly turned hook (col. 8 ll. 4) defining a recess in the mouth of said hook, and a male locking member (Sixto, Jr. catch 28) positioned on the distal end of the second leg comprising at least one detent extending outwardly therefrom, said female and male locking members being formed whereby when said first and second leg members are moved from an open position to a closed position about said hinge section, said resilient hook of said female locking member is urged open to receive the detent of said male locking member in the recess thereof so as to removably lock said first and second leg members of said surgical clip in said closed position (col. 8 ll. 10-12).

The combination of Wilson, Jr. and Sixto, Jr. is obvious to one skilled in the art because Sixto, Jr. has a catch on the surgical clip to secure the clips closure this would improve upon Wilson, Jr. which does not have a secure clip closure. This would help to secure the clips position.

Claims 5-7 are rejected over Wilson, Jr. in view of Sixto, Jr. Claim 5 describes the shape of the legs of the clip (Claim 2 col. 8 ll. 27-36) as found in Wilson, Jr. Claim 6

Art Unit: 3734

describes the use of bosses on the first leg of the clip (Claim 3 col. 8 ll. 41,42) as found in Wilson, Jr. Claim 7 describes the bosses as having a bridge section (Claim 4 col. 8 ll. 47-49) as found in Wilson, Jr.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 4,834,096 to Oh et al. discloses a plastic ligating clip.

U.S. Patent No. 5,575,802 to McQuilkin et al. discloses a medical clip.

U.S. Patent No. 7,001,412 to Gallagher et al. discloses a surgical clip.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Ryckman whose telephone number is (571)-272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571)-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3734

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR



MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER